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*In the name of almighty Allah who has got unlimited jurisdiction over and beyond the universe.*

BEFORE THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE,  
ORAKZAI AT BABER MELA

**Criminal Revision No. 17/4/10-R of 2023**

**Date of institution: 13.06.2023**

**Date of decision: 15.07.2023**

Sharif Khan son of Zeban Khan, Qaum Afridi, resident of Chapri Feroz  
Khel, District Orakzai.-----

**(Petitioner)**

...Versus...

1. Special Magistrate for Forest/Assistant Commissioner, Lower  
Orakzai.

2. District Forest Officer, Orakzai. -----

**(Respondents)**

**Criminal Revision against Judgement dated 30/05/2023 of Special  
Magistrate Forest, Lower Orakzai**

**JUDGMENT**

Petitioner has called in question the validity and propriety of Judgment dated 30.05.2023; passed in Forest Case bearing No.544/AC/L/Forest of the year 2023; whereby, learned Special Magistrate (first class) /Assistant Commissioner Lower, Orakzai vide which petitioners Sharif Khan s/o Zeban Khan and Shah Nawaz son of Amal Gul have been convicted and sentenced for simple imprisonment as well as fine clubbed with confiscation of property.

2. The Patrolling Squad of Forest Department Orakzai, on getting spy information furnished by informer regarding illegal transit of timber, has established barricade at Anjanri Road, Tehsil Lower Orakzai. A vehicle was intercepted on suspicion and was searched that led to recovery of timber available in shape of planks of different size measuring 08 CFT, duly covered through plastic sheet loaded in the vehicle so seized on the

  
**SAYED FAZAL WADOOD**  
Magt. District & Sessions Judge  
Orakzai at Hangu

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place of occurrence. The driver of the seized vehicle as well as owner of the timber had not produced any document authorizing them for transit of timber; therefore, have been exposed to Criminal Law on the subject being brought into motion. Case bearing Challan No. PC.No.16/22-23 dated 22/05/2023 was registered under Section(s) 58, 59, 77, 80, 85(1) (a) of KP Forest Ordinance, 2002; read with, Rule-3&14(2) of Transportation Of Forest Produce Rules 2004; Section-6 and 9 of schedule-III of KP Forest Amendment Act, 2022 read with 2(a) of Compensation Rules 2004; charging therein, Shareef Khan as principal accused and Shah Nawaz as co-accused.

3. Complete Challan was presented by the Divisional Forest Officer, Orakzai. Accused along with witnesses have been produced before Special Magistrate for conduct of further proceedings. Accused have been convicted; against which, instant Criminal Revision has been preferred by the petitioners being aggrieved, which is under adjudication.

4. Mr. Khursheed Alam Advocate representing petitioners/convicts has argued that neither Law on the subject has property been applied nor the procedure prescribed by law has been adopted. He added that the conviction being illegal has followed by the enhanced multi-dimensional sentence. All the grounds and prerequisites for attracting revisional jurisdiction are very much attracting to the facts and circumstances of the case; therefore, the conviction and sentence may be set aside and accused be may be acquitted.

5. Mr. Nisar Ahmed APP for State is of the stance that offence has been committed and petitioners have rightly been convicted. The revision in hand may be dismissed being devoid of merits, the APP concluded.

6. Record reveals that the offences, with which accused have been charged followed by conviction, are no doubt falling under the category of

  
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District & Sessions Judge  
Orakzai at Hangu

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cases summarily triable under Chapter XXII of the Code of Criminal Procedure, 1898; however, being appealable in line with Section 97 of the KP Forest Ordinance, 2002, the mandatory procedure prescribed in Section 264 of the Code of Criminal Procedure, 1898 is required to be adhered with. It is well settled principle of law that in every case tried summarily, the Magistrate is to keep record containing the substance of the evidence and also the particulars mentioned in Section 263 of the Code of Criminal Procedure, 1898. As required to record Judgement obviously by a speaking order showing his application of mind to the Law and facts of the case. The expression "substance of the evidence" implies a judicious selection or precise of the part of the evidence which is really material. The question whether the substance of the evidence has been sufficiently recorded in a particular case depends upon a consideration of the nature and relevance of various pieces of evidence given in the case having regard to the issues raised or involved in the case. The Hon'ble the Superior Judiciary has determined in a case reported as [(54) 1954-2 Mad L Jour 190] that the substance of the evidence should be so recorded as to enable the Appellate Court to judge if there are sufficient materials for the decision. In such legal background, it can safely be concluded that the procedure adopted by the learned Special Magistrate for Forest is in not in consonance with Section-264 of the Code of Criminal Procedure, 1898 and is therefore not sustainable.


7. For what has been discussed above, the impugned Judgment/Order dated 30.05.2023 passed by learned Sub Divisional Forest Magistrate, Lower Orakzai is set aside. The case is remanded back with the directions to decide the same afresh by keeping in view the observation recorded under Paragraph No.6 of this Judgement. File of this Court be consigned to

S. H. FAZL WADOC.  
District & Sessions Judge  
Orakzai Wangu

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District Record Room Orakzai on its completion within the span allowed for. Copy of this Judgment along with record be sent back to learned Sub Divisional Forest Magistrate Lower Orakzai for giving it effect.

Announced in the open Court  
15.07.2023

  
Sayed Fazal Wadood,  
AD&SJ, Orakzai at Baber Mela

**CERTIFICATE.**

Certified that this Judgment is consisting upon four (04) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.

  
Sayed Fazal Wadood,  
ADJ, Orakzai at Baber Mela